IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7056 of 2007()

CRIME NO. 335/07 OF PEERMEDU POLICE STATION

PETITIONERS/ACCUSED

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1. NISHAD, KOLLAMPARAMBIL HOUSE,
LAKSHAM VEEDU COLONY, ELAPPARA,
IDUKKI (A2).

2. SUNIL, EREZHATHUL HOUSE,
KEEZHEPERUMTHARA, THYRORD ESTATE,
ELAPPARA, IDUKKI (A4).

BY ADV. SRI.A.AHZAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA FOR S.I. OF
POLICE, PEERMEDU POLICE STATION (CRIME NO.335/07).

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7056 of 2007

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Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2 and 4. Altogether five persons have been arrayed as accused by now. Allegation is under Section 380 r/w. 34 I.P.C. The crux of the allegations in the F.I.R. is that theft of Jo plates and iron parts, which were kept in the shed in a quarry operated by the defacto complainant, were thieved on 13.10.2007. In the course of investigation accused 1 and 5 were arrested. Their interrogation led to the ascertainment of the role of the petitioners also in the crime committed. The petitioners have not been arrested so far. They are allegedly absconding. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Totally false allegations are raised against the petitioners.

3. The learned Prosecutor submits that the Investigators had arrested accused 1 and 5 and from their confession statements the Investigators have ascertained the role of the petitioners in the crime committed. Only part of the booty has been recovered. The petitioners have to be arrested and interrogated. Only on such interrogation can truth be ascertained completely. At the moment and with the available inputs, there are no circumstances at all that can justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C.

4. The case diary has been placed before me for my perusal. The learned Prosecutor has drawn my attention particularly to the confession statements of the arrested accused. The learned counsel for the petitioner had drawn my attention to the remand report submitted by the police after arrest of some of the accused. The remand report does show the involvement of the other accused persons in the crime, though such other accused had not been named in the remand report when the arrested accused were produced before Court.

5. Having considered all the relevant Inputs, I find no features in this case, which would justify the invocation of the extra ordinary

equitable discretion under section 438 Cr.P.C. in favour of the petitioners. This I am satisfied is a fit case where the petitioners must be directed to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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